

EXTENSIONS OF REMARKS

THE FBI FAIRNESS TO APPEAL IMPROVEMENT ACT (FBI FAIR)

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 31, 1998

Mr. WOLF. Mr. Speaker, some Federal Bureau of Investigation [FBI] special agents are accorded Merit System Protection Board [MSPB] appeal rights and others are not. This discriminatory policy offends traditional notions of fairness and should change. It is not fair that some agents receive MSPB appeal rights while others do not.

Because of my concern about this policy, today I will introduce legislation, the FBI Fairness to Appeal Improvement Act, a copy of which appears at the end of my statement. This simple legislation would amend 5 U.S.C. 7511(b)(8) by striking "the Federal Bureau of Investigation," thereby extending certain procedural and appeal rights with respect to certain adverse personnel actions to all employees of the FBI. This legislation corrects the current disparate treatment of nonveteran special agents regarding their ability to appeal adverse personnel actions and ensures the due process rights of all employees of the FBI.

Last Congress I introduced a bill, H.R. 2683, the Due Process for FBI Agents Act, with the same language as the measure I am introducing today. This legislation in the 104th Congress was attached to H.R. 3841, the Omnibus Civil Service Reform Act of 1996 which passed the House on September 27, 1996, but did not become law.

Special agents of the FBI are loyal civil servants dedicated to protecting Americans from the worst kinds of crime. Their jobs are difficult, demanding, and often dangerous. They are often transferred to posts far from home which demands considerable sacrifice by FBI families. FBI agents are on the front line of the fight against crime. The FBI motto—fidelity, bravery, and integrity—accurately characterizes the manner in which agents approach their important work.

These duties are performed by all agents, veteran and nonveteran alike. However, these two categories of agents receive disparate treatment when charged with misconduct. Military veterans are permitted full due process rights including the ability to appeal adverse personnel actions to the MSPB. In other words, veteran agents, who are in the excepted service, receive the same due process rights that employees in the competitive service receive.

Nonveteran agents, also members of the excepted service, do not. This means that a veteran agent will receive an outside, independent, objective review of his/her case while a nonveteran agent will not. Is this fair? I maintain that it is not. Furthermore, female special agents are particularly hit hard by this policy because few have served in the military; thus they are not eligible to receive the MSPB appeal rights that veteran agents, who are

predominantly men, do. Also, FBI agents should have the same MSPB appeal rights as federal law enforcement agents who work for the Bureau of Alcohol, Tobacco and Firearms, Drug Enforcement Administration, Customs Service, and Border Patrol.

As this legislation was considered in the House in the 104th Congress the FBI raised only one objection. The Bureau was concerned about MSPB decisions, in five cases, that a federal agency could not sanction an employee for making false statements to the agency regarding his or her alleged employment-related misconduct. The Court of Appeals for the Federal Circuit affirmed the MSPB policy. But on December 2, 1997, in the case *LaChance v. Erickson*, the Supreme Court overturned the "bad law" established by the Court of Appeals. The high court held that the Fifth Amendment's Due Process Clause and the Civil Service Reform Act do not preclude a federal agency from sanctioning an employee for making false statements to the agency regarding his or her alleged employment-related misconduct. As a result, the one objection previously voiced by the FBI is no longer applicable.

Mr. Speaker, there is no reason to maintain the distinction between preference eligible veteran and nonveteran agents. All agents, whether veterans or not, should be treated in a fair and equitable manner. The FBI has considerable experience with the MSPB process available to veteran agents. I am not aware that there has been any particular abuse of the MSPB process by preference eligible agents. Likewise, I do not anticipate that expansion of MSPB rights to all agents would be burdensome on the FBI. There is no room in the modern FBI for discriminatory personnel policies; therefore, nonveteran agents should receive all the rights and enjoy all the privileges accorded to their preference eligible veteran counterparts.

Mr. Speaker, I urge our colleagues to co-sponsor this important legislation. I also urge Congressman MICA, chairman of the House Civil Service Subcommittee, to move this legislation as expeditiously as possible. Finally, I include a copy of this bill and a letter from former Congressman Ed Bethune who represents the FBI Agents' Association in support of this legislation in the record immediately following my statement.

ED BETHUNE & ASSOCIATES,
Washington, DC, March 31, 1998.

Hon. FRANK WOLF,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN: The FBI Agents Association, a non-governmental professional association, represents over 8000 active duty FBI Special Agents. The association strongly supports your effort to extend Merit System Protection Board appeal rights to all agents.

As General Counsel for the association I can tell you that the support for this reform is virtually unanimous among rank and file agents.

The association will be working to help you pass this much needed reform in this session of Congress. Again, thanks for your tireless efforts on behalf of the men and

women who are on the front line in the battle against crime.

Sincerely,

ED BETHUNE.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "FBI Fairness to Appeal Improvement Act".

SEC. 2. EXTENSION OF RIGHTS.

(a) IN GENERAL.—Section 7511(b)(8) of title 5, United States Code, is amended by striking "the Federal Bureau of Investigation,".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to adverse personnel actions taking effect after the end of the 45-day period beginning on the date of enactment of this Act.

PERSONAL EXPLANATION

HON. CHARLES H. TAYLOR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 31, 1998

Mr. TAYLOR of North Carolina. Mr. Speaker, on roll call vote 83, H.R. 2608, to protect individuals from having money involuntarily collected and used for political activities by a corporation or labor organization, I was recorded as voting "no." It was my intention to vote "yes," to require the written and voluntary consent from an employee or union member before using any portion of their dues or fees for the organization's political activity.

CONGRATULATIONS TO MAYOR J. PETER KENDALL

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 31, 1998

Mrs. ROUKEMA. Mr. Speaker, I rise to congratulate J. Peter Kendall, mayor of Oakland, New Jersey, on being named 1998 Mayor of the Year by the New Jersey Conference of Mayors in recognition of his many years of exemplary public service. Mayor Kendall is one of the finest municipal officials in the State of New Jersey and this honor is certainly well deserved. From serving as the town Santa Clause each Christmas to using his business expertise to stabilize taxes, he is the very essence of a public servant who finds no job too large or too small to receive his complete attention.

Mayor Kendall and I have worked together on many local projects over the years and he has always provided me with good counsel and authoritative information. One of the most prominent projects in recent years has been the Ramapo River at Oakland Flood Control Project. Oakland has been plagued by devastating floods 15 times in the past 24 years.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.